



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: Kurt Tidd PE, Bureau of Air Quality
SUBJECT: Auburn Concrete
DATE: December 17, 2009

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Statutory and Regulatory References:

Maine's Rule for *Major and Minor Source Air Emissions License Regulations*, 06-096 CMR 115 and *Part 70 Air Emissions License Regulations* 06-096 CMR 140 authorizes the Department to impose reasonable and appropriate license conditions to ensure compliance with emission standards, regulations or orders.

Location:

Westbrook, Maine

Description:

Department records document that Auburn Concrete installed a concrete batch plant without obtaining an Air Emissions License. Auburn Concrete has submitted an application for an Air Emissions License to the Department prior to the signing of the Consent Agreement.

Environmental Issues:

The Department relies on the licensing of facilities to ensure compliance with State Laws and Regulations. Through the licensing process, the Department is able to control the amount and types of pollutants that are emitted to the atmosphere within the State.

Department Recommendation:

Staff recommends approval of the Consent Agreement which requires Auburn Concrete to comply with the requirements of Maine's Rule for *Major and Minor Source Air Emissions License Regulations*, 06-096 CMR 115 and provides for Civil Penalties in the amount of \$2,105.00. The penalty was based on the Air Bureau's penalty assessment guideline.

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STATE OF MAINE
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IN THE MATTER OF:

AUBURN CONCRETE) ADMINISTRATIVE CONSENT
CUMBERLAND COUNTY) AGREEMENT
WESTBROOK, MAINE)
AIR QUALITY VIOLATIONS)
EIS # 2009-215-A)

This Agreement, by and among Auburn Concrete, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

THE PARTIES AGREE AS FOLLOWS:

1. Auburn Concrete is a Maine business corporation in good standing and which operates concrete facilities with its principal location in Auburn, Maine.
2. The violation described herein occurred at Auburn Concrete's Westbrook facility.
3. During times relevant to this Agreement, Auburn Concrete was subject to Maine's *Protection and Improvement of Air laws* ("Air Act"), 38 M.R.S.A. § 581-610-B.
4. Throughout the period of time addressed in this Agreement, Auburn Concrete was subject to 38 M.R.S.A § 590(1) and Maine's Rule for *Major and Minor Source Air Emissions License Regulations*, 06-096 CMR 115 (1)(A)(B)(2) which states in relevant part:

1. Applicability

A. Geographic scope. This regulation shall be effective in all ambient air quality control regions in the State.

B. General requirement. An air emission license is required for the sources or emissions units listed below. Once a source requires an air emission license, all emissions units which emit regulated pollutants at the source must be included on the license, except the following: insignificant activities listed in Appendix B of this Chapter; activities which the Department has determined in writing on a case-by-case basis to be substantially equivalent to the insignificant activities specified in Appendix B of this Chapter; those activities which are clearly trivial. Any person who emits, will emit, or causes to be emitted regulated pollutants from any existing or new source may not begin actual

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construction, operate, maintain, or modify the new or existing source without an air emission license from the Department, unless the source is listed in Section 1(C) of this Chapter. At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Chapter 115.4.A. Major Modification or Major Source License shall apply to the source or modification as though actual construction had not yet begun on the source or modification.

An air emission license is required for the following:

- (2) Any source whose potential to emit can be determined a Minor source;

38 M.R.S.A 590 Licensing

1. License required. After ambient air quality standards and emission standards have been established within a region, the board may by rule provide that a person may not operate, maintain or modify in that region any air contamination source or emit any air contaminants in that region without an air emission license from the department. An incinerator may not be used to dispose of solid waste without a license from the department, except an incinerator with a primary chamber volume no greater than 133 cubic feet or 1,000 gallons that burn only wood waste as defined in Title 12, section 9324, subsection 7-A and painted and unpainted wood from construction and demolition debris.
5. During a Department site visit to the Westbrook facility it was determined that Auburn Concrete had not obtained an Air Emissions License for the operation of the concrete facility. Auburn Concrete has since submitted an Air Emissions License application to the Department for their Westbrook facility.
6. By the conduct described in Paragraph five (5), Auburn Concrete violated 38 M.R.S.A 590(1) and Maine's Rule for *Major and Minor Source Air Emissions License Regulations*, 06-096 CMR 115(1)(A)(B)(2).
7. Department Staff notified Auburn Concrete by a Notice of Violation sent on October 19, 2009 of the Air Emissions violation described in Paragraphs five (5) and six (6).
8. The Department has regulatory authority over the activities described herein.

**AUBURN CONCRETE
CUMBERLAND COUNTY
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9. For the purposes of this Agreement, Auburn Concrete agrees that it received proper notice of all violations identified herein pursuant to 38 M.R.S.A. §347-A(1)(B).
10. Pursuant to 38 M.R.S.A § 341-D(6)(C) and § 347-A(1)(A)(1), Administrative Consent Agreements must be approved by the Board of Environmental Protection ("Board"), which is part of the Department.
11. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
12. To resolve the violation referred to in Paragraphs five (5) and six (6) of this Agreement, Auburn Concrete agrees to pay to the Treasurer, State of Maine, immediately upon signing this Agreement, a civil monetary penalty in the amount of two thousand, one hundred and five dollars (\$2,105.00).
13. The Department and Office of the Attorney General grant a release of their causes of action against Auburn Concrete for the specific violation listed in Paragraph five (5) and six (6) of this Agreement on the express condition that all actions listed in Paragraph twelve (12) of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until all requirements of this Agreement are satisfied.
14. Non-compliance with this Agreement voids the release set forth in Paragraph thirteen (13) of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
15. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders including but not limited to licensing requirements.
16. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages:

AUBURN CONCRETE

BY: *[Signature]* November 20, 2009
Title CONTROLLER/OWNER DATE

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
Susan M. Lessard, Chair DATE

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____
Gerald D. Reid, Assistant Attorney General DATE